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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In Re

Case No. BK-09-29320-BAM
Chapter 13

MARIO SIFUENTES
YOLANDA SIFUENTES

TRUSTEE: Rick A. Yarnall

Debtors

Hearing Date: February 9, 2010
Hearing Time: 1:30 p.m.

QUALIFIED OPPOSITION TO MOTION FOR RELIEF FROM STAY

Come Now Debtors, Mario Sifuentes and Yolanda Sifuentes (hereinafter "Debtors"), by and through their legal counsel, David M. Crosby, of the law firm Crosby & Associates who respectfully oppose the **Wells Fargo Bank, NA as Trustee under Pooling and Servicing Agreement dated as of October 1, 2006 Securitized Asset Back Receivables LLC trust 2006-NC3 Mortgage Pass-through Certificates, Series 2006-NC3 10-7004 Motion for Relief From Automatic Stay** filed with this Court on January 8, 2010 by **Wells Fargo Bank, NA**, (hereinafter "Movant"), alleged secured creditor, for the purpose of requesting this Court to condition any such relief from stay upon the requirement that Movant reinitiate subject foreclosure by recording a Notice of Default pursuant to NRS 107.080 for the following reasons:

1. Movant has failed to provide a properly certified copy of the Note or promise of payment, and therefore has not proved that it holds the Note. The movant has attached only a copy of a note which it claims is a true and correct copy, although

1 no proof of current holder of physical note. The issues is whether the Movant is the
2 physical holder of the note, which is a negotiable instrument. Movant has failed to
3 prove they actually hold the Note in question. Accordingly, even if Movant had an
4 interest in the deed of trust, it would have no right to foreclose on the Subject Property
5 because there is no evidence that it is entitled to payment on the Note.

6 2. Debtors desires to participate in the Nevada AB-149 Foreclosure
7 Mediation Program pursuant to NRS Chapter 107, in order to avoid foreclosure
8 consistent with the purpose and intent of the Foreclosure Mediation Program which
9 participation must be initiated by the filing of the Notice of Default subsequent to July 1,
10 2009.

11 3. Debtors are hard-working, honest people who has recently experienced
12 reduced income due to the present economic crisis and desire to avoid foreclosure, pay
13 a fair fee based on the value of their home and to avoid foreclosure and subsequent
14 displacement which will negatively effect their Chapter 13 bankruptcy case.

15 I.

16 **STATEMENT OF FACT**

17 1. Debtor filed a Chapter 13 case on October 13, 2009, to restructure
18 personal debt including arrearage on their home. A Notice of Default had been filed on
19 January 12, 2009.

20 2. Debtor made substantial monthly payments for payment of the loan(s)
21 encumbering their home from the time of purchase until the time that their income
22 became reduced.

23 3. The property subject to this action is located at 4765 Lana Dr., Las Vegas,
24 Nevada 89121 (hereinafter "Real Property") and is presently appraised at \$55,032.00.
25 The alleged loan indebtedness is in excess of \$185,216.49.

26 II.

27 **POINTS AND AUTHORITIES**

28 N.R.S. Chapter 107 together with Foreclosure Mediation Rules adopted by the

1 Nevada Supreme Court provide that no mediation may be initiated until and unless a
2 Notice of Default is filed subsequent to July 1, 2009.

3
4 **III.**

5 **CONCLUSION**

6 THEREFORE, based upon the facts and the points and authorities set forth
7 herein, and any arguments heard at the hearing on this matter, Debtors respectfully
8 request that this Court condition any order granting motion for relief from the automatic
9 stay upon requirement that the continued foreclosure be reinitiated with the recording of
10 a new Notice of Default.

11 DATED this 15th day of January, 2010.

12 CROSBY & ASSOCIATES

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14 By: /s/ David M. Crosby
15 DAVID M. CROSBY, ESQ.
16 Nevada Bar No. 003499
17 711 S. 8th St.
18 Las Vegas, Nevada 89101
19 Attorneys for Debtors
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CERTIFICATE OF MAILING

I, the undersigned, an employee of the Crosby & Associates, hereby certify that on the 15th day of January, 2010, I deposited in the United States Mail, first class mail, postage pre-paid, a true and correct copy of the **Qualified Opposition to Motion for Relief from Stay** to all parties listed below:

Trustee

Rick A. Yarnall
701 South Bridger, # 820
Las Vegas, NV 89101

Debtor

Mario Sifuentes
Yolanda Sifuentes
4765 Lana Dr.
Las Vegas, NV 89121

Attorney

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/s/ Amelina Delgado
An employee of
CROSBY & ASSOCIATES